



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone

(617)-796-1120

Telefax

(617) 796-1142

E-mail

mkruse@newtonma.gov

David B. Cohen
Mayor

Public Hearing Date: September 9, 2008

Land Use Action Date: TBD

Board of Aldermen Action Date: December 1, 2008

90-Day Expiration: December 8, 2008

DATE: September 5, 2008

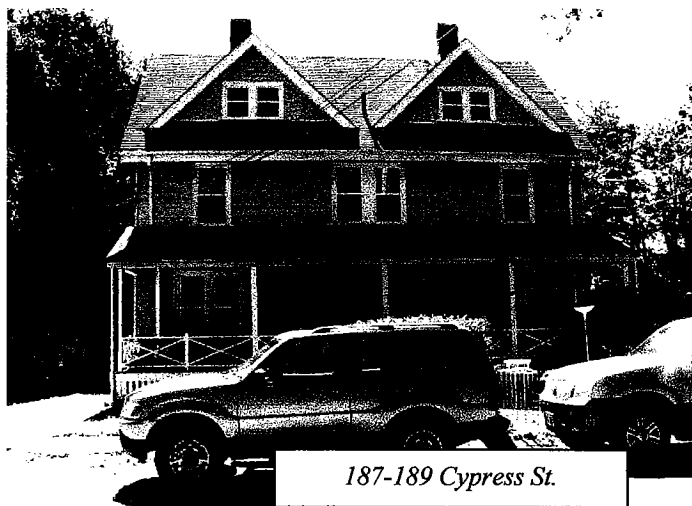
TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner *sk*
Alexandra Ananth, Senior Planner

SUBJECT: #278-08 RHANNA KIDWELL & DANIEL SILVER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and extension of a non-conforming use and structure to expand to the rear and sides of an existing 4-family dwelling and to construct to the rear a 6-car garage in excess of 700 sf at 187-189 CYPRESS STREET, Ward 6, Newton Centre, on land known as Sec 65, Blk 15, Lot 16, containing approximately 20,704 sf of land in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decisionmaking process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent working session.



EXECUTIVE SUMMARY

The subject property consists of a 20,704 square foot lot improved with a four-family residence. The four-family use has been determined to be lawfully nonconforming and the structure is also lawfully nonconforming as to the height and number of stories. The petitioners are proposing to expand the footprint of the structure to the sides and to the rear, in order to increase the size of the units while not increasing the number of units. The petitioners are also proposing to construct a detached accessory garage providing parking for six vehicles (two exterior stalls also will be added for a total of eight spaces) and to alter the grade in excess of three feet on portions of the lot. Finally, as the site contains parking for more than five cars, the petitioners are requesting waivers from many of the parking requirements including limits on parking within the side setback, parking within five feet of dwelling units, minimum driveway width, the requirement to provide one handicap parking stall, as well as screening and lighting requirements.

Although the Planning Department has no significant concerns with expanding the use and structure, proposed additions would create the largest structure in the immediate neighborhood. The Planning Department understands the petitioners' desire to expand the unit sizes and preserve the deteriorating structure and four-family use, but notes that proposed addition does not meet the current dimensional controls (building height and maximum number of stories). If designed to conform to these standards, floor plates would not match up and may result in a more complex design. Yet, this would allow for a diversity of unit sizes, consistent with Newton's *Comprehensive Plan*. Finally, although the lot is quite large, the Planning Department is concerned that there is no usable open space on-site for the four-family use. The creation of a pathway to the rear of the lot and location of an amenity for residents to enjoy there would be a benefit to future tenants.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition the Board should consider whether:

- ◆ ***the proposed expansion of a nonconforming structure would not be substantially more detrimental to the neighborhood than the existing nonconforming structure;***
- ◆ ***the proposed expansion of a nonconforming use would not be substantially more detrimental to the neighborhood than the existing nonconforming use;***
- ◆ ***the proposed garage for more than three automobiles is appropriate;***
- ◆ ***proposed changes to the grade will have any impact on abutters or the immediate neighborhood; and***
- ◆ ***the proposed waivers to the parking controls will be a hazard to vehicles or pedestrians.***

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on Cypress Street across from land owned by Andover Newton Theological School and not far from the Bowen Elementary School. The residence is located in a large area zoned Single Residence 3. The immediate neighborhood contains a mix of one-, two-, three-, and four-family residences.

B. Site

The lot contains an approximately 4,031 square foot residence that currently contains four units. The residence is 3.5 stories high and in deteriorating condition. The lot is relatively level at the street, but slopes steeply downhill in the middle of the lot approximately 25 feet beyond the existing structure before leveling off again towards the rear of the lot, which is wooded.



The residence abuts a single-family residence to the west and a four-family structure to the east. There are two single-family residences to the rear, although these structures are over 300 feet away. Immediately surrounding lots are quite large with the dwellings set close to the street and their wooded backyards create the feeling of a midblock forest.

III. PROJECT REVIEW

A. Land Use

The site is used as a four-family residence and no change in use is proposed.

B. Building and Site Design

The existing building is a 3½-story wood structure that sits close to the front of the lot with a front porch that spans nearly its entire width. Two concrete walkways currently lead to the residence and two new walkways are shown leading to the upper apartments. As shown, the existing structure will be expanded in width approximately seven feet in each direction and 20 feet to the rear. New decks of approximately eight feet in width also are proposed in the rear and retaining walls will be added along each side of the expanded residence leading back towards the proposed garage.

The new garage is approximately 20' x 56' and is placed where there site slopes steeply downward. From the rear of the site, the garage will appear to

be two stories high at nearly 18 feet in height. While the structure appears massive due to the change in topography, the closest rear abutter is approximately 300 feet to the rear and screened by the woods. Two exterior parking stalls are located on-site: one adjacent to the proposed garage and one just south of the expanded structure. The Planning Department is concerned about emergency vehicle access around parking stall #8 and is awaiting comments regarding this issue from the Fire Department.

The net addition to the footprint is 2,874 square feet. The proposed new residence would increase from approximately 4350 square feet to 7224 square feet. Although FAR is not applicable, proposed FAR would increase from approximately .21 to approximately .35, which would conform in this context.

Proposed building materials and elevations are not provided and it is unclear if the new garage would be open or has doors or other detailing. Although the Planning Department believes that structured parking would be a benefit to the site and neighborhood, further details and elevations of the proposed garage should be submitted prior to being scheduled for a working session in order to better describe its appearance and compatibility within its context.

Because this lot is very large, open space and building lot coverage requirements are met. However, nearly all of the front half of the lot is covered with either structure or paving; due to topography and the wooded nature of the site there is no usable open space for the four-family use. The use already exceeds the lot area per unit and the site may feel crowded with further expansion of the footprint coupled with a large accessory parking structure.

The petitioners propose to maintain the current building height for the proposed addition at approximately 33 feet where 30 feet is allowed and 3½ stories where 2½ stories are allowed; if designed to conform to current standards, the existing floor plates will not line up. However, the addition will be screened from most views by the existing building. In its review, the Land Use Committee should consider whether such exceptions are appropriate, given the circumstances.

The petitioners are proposing to alter the grade in excess of three feet in two portions of the lot in order to provide the necessary parking on-site. Area 1 is a 463 square foot area located behind the proposed expanded garage and between the proposed garage. The maximum grade change is five feet of fill. Area 2 is at proposed parking stall #7 and involves approximately 218 square feet. The proposed grade change in this area has a maximum change of eight feet of fill. It appears two trees will need to be removed from this area in order to accommodate the proposed grade change and parking area. The Planning Department recommends the petitioners shift the garage and adjacent parking stall farther west to preserve these trees. This also would allow for the parking stall to be located farther out of the side setback and screened from the street view by the expanded residence.

The Planning Department feels that the creation of a pathway to the rear of the lot and location of an amenity for residents to enjoy would be a benefit to future tenants. The Associate City Engineer also suggests the petitioners consider adding steps beside the retaining wall for access to the backyard.

C. Landscaping

The petitioners submitted a landscape plan showing mostly ornamental trees and shrubs. The Planning Department suggests the petitioners consult with a landscape architect and add a few tall-growing shade-tolerant evergreen trees behind the proposed garage to help break up the mass of the long flat façade. Although the rear of the lot is wooded many of the trees are deciduous and leggy therefore some additional screening is warranted. As previously noted, it appears two deciduous trees may need to be removed in order to locate the parking stall besides the proposed garage and that shifting the garage would allow for them to be saved. This would also allow for additional screen plantings along both side setbacks.

IV. COMPREHENSIVE PLAN

The November 2007 *Newton Comprehensive Plan* seeks to guide development to reflect the character held or sought by existing residential neighborhoods, protecting the qualities “*of that which exists.*” Although the Planning Department is concerned with the proposed expansion of the structure, we recognize that the renovation and expansion of this structure will ensure its preservation. The Planning Department acknowledges that there are few four-family structures in Newton and the maintenance of this structure provides needed diversity in the housing stock. Although large, the proposed addition is in keeping with the existing architecture of the neighborhood and should not negatively impact immediate abutters.

V. TECHNICAL REVIEW

A. Technical Considerations –Dimensional and Parking Controls

The existing residence is nonconforming as to use (four-family in a SR district), lot area per unit, front setback, building height and number of stories. Proposed additions are nonconforming as to height and number of stories. The proposed garage exceeds the 700 square foot maximum. The use requires parking for eight cars and the petitioners will need waivers for many of the requirements for parking areas with parking for more than five cars.

B. Other Departmental Reviews

The petitioner filed with the Newton Historical Commission and the building is not considered historic or preferably preserved. The Fire Department approved the layout provided that all units and the garage are sprinklered. The Associate City Engineer reviewed this project (*SEE ATTACHMENT “A”*).

Although the drainage analysis and design is correct based on the 100-year storm event, minor concerns will need to be addressed prior to the issuance of a building permit. The Associate City Engineer noted that areas identified for filling in excess of three feet are properly identified and that once the lot is landscaped and stabilized, there should be no negative impact to abutters. He also notes that details of the proposed retaining wall must be submitted and that the proposed wall will need a safety fence along its perimeter as the difference in grade ranges from 12-15 feet in height.

VI. ZONING RELIEF SOUGHT

Based on the completed zoning review, dated July 24, 2008 (*SEE ATTACHMENT "B"*), the petitioner is seeking approval through or relief from:

- Section 30-5(b)(4) for approvals to alter the existing contours by more than three feet on portions of the lot;
- Section 30-15(m)(5)(b) and (c) for an accessory garage with provision for more than three (3) automobiles and greater than 700 square feet in area;
- Section 30-19(m) for exceptions to the parking requirements including:
 - 30-19(g)(1) for parking in the side setback, which is not expressly permitted for four-family residences;
 - 30-19(h)(1) to locate parking within the side setback and to locate parking closer than five feet from a building or structure containing dwelling units;
 - 30-19(h)(2)(c) for a waiver from the requirement to provide one handicap parking space in a parking facility with more than five stalls;
 - 30-19(h)(4)(a) for a waiver from the minimum driveway width;
 - 30-19(j) for screening and lighting for parking facilities with more than five stalls;
- Section 30-21(b) for approval for the expansion of a nonconforming structure (i.e., rear addition) and to provide for the extension of the nonconforming four-family dwelling unit use in an SR-3 zone;
- Section 30-23 for approval of site plan; and
- Section 30-24(d) for approval of proposed special permit.

VII. PETITIONERS' RESPONSIBILITIES

The petitioners should submit garage elevations and identify building materials.

ATTACHMENTS:

ATTACHMENT A: Associate City Engineer's Review Memorandum, August 27, 2008
ATTACHMENT B: Zoning Review Memorandum, July 31, 20
ATTACHMENT C: Vicinity Map

CITY OF NEWTON
ENGINEERING DIVISION

MEMORANDUM

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – #187-189 Cypress Street

Date: August 27, 2008

CC: Lou Taverna, PE City Engineer (via email)
Candice Havens, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

*Topographic Site Plan
Showing proposed Conditions at #187-189 Cypress Street
Newton, MA
Prepared by: VTP Associates Inc.
Dated: August 1, 2008*

Drainage:

1. The drainage analysis and design is correct based on the City of Newton's 100-year storm event. The only concern is the new wall is directly on the southerly property line, weep holes from the wall will discharge directly onto the abutter's property, this needs to be addressed.
2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and adopted by applicant, incorporated into the deed; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all apparentness including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowners Association.

Environmental:

1. Are there any existing underground oil tanks that are planned to be removed; if so permits must be obtained from Newton Fire Department.

Water & Sewer:

1. New domestic water and sanitary sewer services are needed for the units.
2. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code. In order to verify the slopes and inverts of the proposed service connection, two manholes of the existing sanitary sewer system need to be identified on the plan with rim & invert elevations. The crown of the service connection & the sewer man need to match.
3. The existing water & sewer services to the building shall be cut and capped at the main and be completely removed from the site and properly back filled. The Engineering Division must inspect this work; failure to having this work inspected my result in the delay of issuance of the Utility Connection Permit.
4. All utility trenches with the right of way shall be backfilled with Control Density Fill (CDF) excavatable Type IE, detail is available in the city of Newton Construction Standards Detail Book.

3' Grade Change:

1. The areas identified as filling in excess of 3-feet are properly identified, and once the lot is landscaped and stabilized, there should be no negative impact to any abutter.

2. The proposed wall will need a safety fence along its perimeter, as the difference in grade ranges from 12-15' high.
3. The applicant should consider installing steps along the retaining wall to provide access to the backyard.
4. Two site section should be submitted; one through the proposed driveway and parking space along the southerly property line, and a second section from the two abutting properties and through the proposed retaining wall and the remainder of the lot.
5. Details of the proposed retaining wall are needed. The design of the retaining wall will require plans stamped by a professional engineer due to the proposed heights.
6. An approved type of siltation control is needed

Access:

1. The width of the driveway needs to be dimensioned between the southerly property line and the proposed parking stall labeled #8.
2. Where will snow be stockpiled, and will vehicles safely maneuver around the corner of the house.

Public Benefit:

- This property is located along a school route (Bowen School); and the sidewalk along the entire frontage should be upgraded to cement concrete with granite curb to match the abutting property to the north. To help facilitate proper installation of the sidewalk and granite curbing, a 27" deciduous tree [which has damaged limbs] that current has roots heaving the asphalt sidewalk should be cut down.

General:

1. All tree removal shall comply with the City's Tree Ordinance.
2. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
3. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
4. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
5. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
6. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

Zoning Review Memorandum

ATTACHMENT B

Dt: July 24, 2008

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
Candace Havens, Chief Planner
Alexandra Ananth, Senior Planner

Cc: Michael Kruse, Director, Department of Planning and Development
G. Michael Peirce, Esq., representing Rhanna Kidwell & Daniel Silver
Ouida Young, Associate City Solicitor

RE: Request to expand a legal nonconforming structure, extend a legal nonconforming four-family use, construct an accessory garage for more than three (3) automobiles and greater than 700 sq. ft. in area, and allow a grade change in excess of three (3) feet.

Applicant: Rhanna Kidwell & Daniel Silver

Site: 187-189 Cypress St.

SBL: Section 65, Block 15, Lot 16

Zoning: SR-3

Lot Area: 20,704 square feet

Current use: Four-family residence

Proposed use: expanded four-family residence with detached garage greater than 700 sq. ft. and with capacity of more than 3 cars, and for a grade change in excess of 3 feet.

Background:

The subject property consists of a 20,704 square foot lot currently improved with a four-family residence, which Commissioner of Inspectional Services, John Lojek has determined is a legal nonconforming use (see letter dated October 29, 2007). The building also appears to be legal nonconforming, as it is 3.5 stories where three stories are allowed and exceeds the 30-foot height limit.

The applicant is proposing to expand the structure to increase the size of the units, while not increasing the number of units. The applicant will need to seek a special permit pursuant to §30-21(b) for alteration of a nonconforming structure and extension of a non-conforming use.

The applicant also proposes to construct a detached accessory garage providing for more than three (3) automobiles and in excess of 700 square feet for which they will need a special permit through §30-15(m)(5)(b) and (c).

Finally, it appears the applicant is proposing to alter the grade in excess of three feet on portions of the lot to construct the garage, which requires approval of a special permit pursuant to §30-5(b)(4).

Administrative determinations:

1. The subject site is comprised of a lot created before December 7, 1953 ("old lot") and is subject to pre-1953 dimensional controls applicable to lots in the SR-3 zone. The following review is based on the materials and plans received to date referenced under Plans and Materials Reviewed, below.

2. The following table sets forth the applicable dimensional controls for residences located in the SR-3 zone:

| SR-3 (Old Lot) | Required | Existing | Proposed |
|----------------------------|------------------------|----------------------|----------------------|
| Lot Area | 7,000 sq. ft. | 20,704 sq. ft. | N/C |
| Lot Area Per Unit | 10,000 sq. ft. | 5,176 sq. ft. | N/C |
| Frontage | 70 ft. | 80 ft. | N/C |
| Setbacks | | | |
| Front | 25 ft./15.75 w/ avging | 14.3 ft. | N/C |
| Side | 7.5 ft. | 12 ft. | 7.7 ft. |
| Rear | 15 ft. | 176.6 ft. | 137.4 ft. |
| Total Floor Area Ratio | .35 | NA | .349 |
| Building Height | 30 ft. | 33.98 ft. | 33.76 ft. |
| Max. Number of Stories | 2.5 | 3.5 | 3.5 |
| Max. building lot coverage | 30% | 10% | 18.6% |
| Min. amount of open space | 50% | 78.2% | 65.3% |
| Garage | < 700 sq. ft. | NA | 1,120 sq. ft. |

As noted in the table above, the existing building is a legal nonconforming four-family structure with a nonconforming front setback, height and number of stories. The exterior and use of the building will remain the same, but the site is subject to special permit approval per §30-21(b) to alter and extend a nonconforming use and structure.

3. The Newton Zoning Ordinance Sections 30-15(m)(5)(b) and (c) regulate construction of accessory garages. The proposed garage would provide parking for 6 cars and will be 1120 square feet. The applicant will need to seek relief for a garage providing parking for more than three (3) automobiles and exceeds 700 square feet. Two surface stalls also are provided, meeting the parking stall requirement of 8 spaces (2 per housing unit x 4 units = 8 spaces).
4. Section 30-19(h) sets out the applicable parking and driveway requirements for parking facilities containing more than five (5) stalls. Section 30-19(h)(1) prohibits parking within the setback or within 5 feet of a building or structure containing dwelling units. Parking space #7 appears to be within the setback while parking space #8 appears closer than 5 feet from the building. Section 30-19(h)(2)(c) requires one handicapped parking space in facilities with between 6 and 25 parking spaces. None are shown on the proposed plan. Under §30-19(h)(4)(a), the minimum driveway width for two-way traffic is 20 feet; the submitted plans show a variable driveway width of between 10 feet (where the driveway passes parking space #8) and 18 feet. Section 30-19(g)(1) allows parking in the side setback for one- and two-family residences, but not for four-family structures. The applicant may apply for waivers for each of these requirements under §30-19(m).
5. Section 30-19(j) outlines lighting and screening requirements for a parking facility containing more than five parking stalls. The plans submitted do not show any screening or lighting plans. Such plans should be submitted and if the plans do not comply with this section, the applicant should request a waiver from these provisions.

6. The applicant is proposing to alter the grade in excess of three feet on portions of the lot in order to construct the garage, which is subject special permit approval per 30-5(b)(4).
7. See "Zoning Relief Summary" below.

| <i>Zoning Relief Summary</i> | | |
|------------------------------|---|------------------------------|
| <i>Ordinance</i> | | <i>Action Required</i> |
| | Non-conforming structure and use | |
| 30-21(b) | Approval for the expansion of a nonconforming structure, i.e. rear addition, to provide for the extension of the nonconforming 4-family dwelling unit use in the SR-3 zone. | SP per §30-24 |
| | Accessory Structure | |
| 30-15(m)(5)(b) and (c) | An accessory garage with provision for more than three (3) automobiles and greater than 700 sq. ft. in area | SP per §30-24 |
| | Site | |
| 30-5(b)(4) | Approval to alter existing contours by more than three feet as shown on plan. | SP per §30-24 |
| 30-23 | Site plan approval | X |
| | Parking | |
| 30-19(h)(1) | Waiver to locate parking within the side setback | Waiver per §30-19(m) |
| 30-19(h)(1) | Waiver to locate parking closer than 5 feet from a building or structure containing dwelling units. | Waiver per §30-19(m) |
| 30-19(h)(2)(c) | Waiver from the requirement to provide one handicap parking space in a parking facility with 5 or more stalls. | Waiver per §30-19(m) |
| 30-19(h)(4)(a) | Waiver from the minimum driveway width | Waiver per §30-19(m) |
| 30-19(j) | Screening and lighting for parking facilities with 5 or more stalls. | TBD, more information needed |
| 30-19(g)(1) | Parking in the side setback not expressly permitted for four-family residences | Waiver per §30-19(m) |

Plans and materials reviewed:

- Nonconforming Narrative by G. Michael Peirce, undated
- "Topographic Site Plan Newton Massachusetts Showing Proposed Conditions at 187-189 Cypress Street" dated April 7, 2008, last revised June 19, 2008. Bearing the stamp and signature of James J. Abely, Registered Professional Civil Engineer and Professional Land Surveyor
- "Grade Change Plan Showing Proposed Conditions at 187-189 Cypress Street" dated June 4, 2008. Bearing the stamp and signature of James J. Abely, Professional Land Surveyor
- "Area Map Newton, Massachusetts at 187-189 Cypress Street" dated June 4, 2008. Bearing the stamp and signature of James J. Abely, Professional Land Surveyor
- "187-189 Cypress Street Newton, MA, all dated April 2, 2008, all last revised June 4, 2008, consisting of the following sheets:
 - A1 - Basement/1st Floor
 - A2 - 2nd Floor
 - A3 - 3rd Floor and ½ Story
 - A4 - Elevations
- Letter from John D. Lojek, Commissioner of Inspectional Services confirming the property as a legal nonconforming 4-family house, dated October 29, 2007
- Owners' deed (50442/315) and source deed from 1940 (6436/60) establishing lot age as old lot

